UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2009 JAN 13 PM 4:10
BY DEPUTY

HARTFORD CASUALTY INSURANCE COMPANY Plaintiff,	§	CIVIL ACTION
V.	§	NO. 3:08-cv-00118-PRM
BORDER STATES TRAFFIC SUPPLY INC., ESTHER ABRAHAM, JORGE CARDONA, ROBERT DURKIN, AND STEVE GEORGE Defendants.	§	

ANSWER IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Daniel Cordova and Jacob Cordova, hereinafter called Intervenors, and file this Answer in Intervention, and in support hereof, would respectfully show the Court as follows:

I. INTRODUCTION

1. Intervenors are individuals who reside in El Paso, Texas.

2. Plaintiff, Hartford Casualty Insurance Company, has appeared in this action and may be served with notice of this Answer by sending a copy to its attorney, Greg C. Wilkins, at , P.O. Box 1751, Beaumont, Texas, 77704-1751.

3. Defendant, Jorge Cardona, is an individual who may be served with notice of this Answer by sending a copy to P.O. Box 693, El Paso, Texas, 79915. Intervenor is unaware of the status of service of this suit on the Defendant.

4. Defendant, Border States Traffic Supply, Inc., is a Texas Corporation who may be served with notice of this Answer by sending a copy to their registered agent, Steve George at 946

Hawkins, El Paso, Texas, 79915. Intervenor is unaware of the status of service of this suit on the Defendant.

5. Defendant, Esther Abraham, is a resident of California who may be served with notice of this Answer by sending a copy to 2951 South Court, Palo Alto, California 94306. Intervenor is unaware of the status of service of this suit on this Defendant.

6. Defendant, Robert Durkin, is a resident of Texas who may be served with notice of this Answer by sending a copy to 4120 Rio Bravo, Suite 301, El Paso, Texas 79902. Intervenor is unaware of the status of service of this suit on this Defendant.

7. Defendant, Steven George is a resident of Texas who may be served with notice of this Answer by sending a copy to 608 E. 3rd Street, Prosper, Texas 75708-7959. Intervenor is unaware of the status of service of this suit on this Defendant.

II. THE ORIGINAL LAWSUIT

5. On or about August 7, 2006, Intervenors filed an original petition in the 346th Judicial District Court of El Paso County, Texas, Cause No. 2006-3221, naming George Cardona and Border States as Defendants, (hereinafter "Cordova Lawsuit"). The Cordova Lawsuit, originated out of an incident which occurred on September 30, 2005, in which Intervenor, Daniel Cordova, was severely injured in a work related accident.

6. The Defendants tendered the Cordova Lawsuit to Hartford for a defense and indemnity under the Hartford policy. Hartford has provided the Defendant with a defense in the Cordova Lawsuit, but the defense was subject to a reservation of rights that Hartford has under the policy.

7. Intervenors maintain that the Hartford policy provides coverage for Intervenor's damages, if any awarded, in the Cordova Lawsuit. As such, Intervenors have a justifiable interest in the matters in controversy in this litigation.

III. ADMISSIONS AND DENIALS

8. Intervenors provide the following answers and denials to the claims and allegations asserted in Plaintiff's Original Complaint:

9. Intervenors admit the allegations in Paragraph 1.

10. Intervenors admit the allegations in Paragraph 2.

11. Intervenors admit the allegations in Paragraph 3.

12. Intervenors admit the allegations in Paragraph 4.

13. Intervenors admit the allegations in Paragraph 5.

14. Intervenors admit the allegations in Paragraph 6.

15. Intervenors admit the allegations in Paragraph 7.

16. Intervenors admit the allegations in Paragraph 8.

17. To the extent Paragraph 9 incorporates the prior paragraphs, Intervenors admit and deny.

18. In light of the difficulties Intervenors have had in the Cordova Lawsuit to secure the applicable insurance policy, Intervenors do not have sufficient information at this time to admit or deny the allegations in Paragraph 10.

19. Intervenors admit the allegations in Paragraph 11.

20. Intervenors do not have sufficient knowledge to admit or deny interactions between Border States and Hartford as set forth in Paragraph 12.

21. Intervenors admit the allegations in Paragraph 13.

22. Intervenors do not have sufficient information to admit or deny the interactions between Hartford and Abraham Durkin, and George as set forth in Paragraph 14.

23. In light of the difficulties Intervenors have had in the Cordova Lawsuit to secure the applicable insurance policy, Intervenors do not have sufficient information at this time to admit or deny the allegations in Paragraph 15.

24. In light of the difficulties Intervenors have had in the Cordova Lawsuit to secure the applicable insurance policy, Intervenors do not have sufficient information at this time to admit or deny the allegations in Paragraph 16.

25. In light of the difficulties Intervenors have had in the Cordova Lawsuit to secure the applicable insurance policy, Intervenors do not have sufficient information at this time to admit or deny the allegations in Paragraph 17.

26. In light of the difficulties Intervenors have had in the Cordova Lawsuit to secure the applicable insurance policy, Intervenors do not have sufficient information at this time to admit or deny the allegations in Paragraph 18.

27. Given the trial court's ruling that there is no workers compensation coverage concerning the claims made in the Cordova Lawsuit, Intervenors deny that there is a bonafide dispute concerning coverage as alleged in Paragraph 19. However, to the extent there is a bonafide dispute, Intervenors admit that the dispute is ripe for resolution under the Declaratory Judgment Act.

28. To the extent Paragraph 20 incorporates the prior paragraphs, Intervenors admit and deny the paragraphs as set for above.

29. Intervenors deny that Hartford is entitled to the relief sought in Paragraph 21.

30. Intervenors deny that Hartford is entitled to the relief sought in Paragraph 22.

31. Intervenors deny that Hartford is entitled to the relief sought in Paragraph 23.

32. Intervenors deny that Hartford is entitled to the relief sought in Paragraph 24.

33. Intervenors deny that Hartford is entitled to the relief sought in Paragraph 25.

IV. AFFIRMATIVE DEFENSE

34. With regard to Hartford's assertion that the claims asserted in the Cordova Lawsuit are covered under a workers compensation policy, Hartford's interests are aligned with Border States' Interests.

35. Border States' allegations concerning workers compensation coverage have already been adjudicated to a judgment in the Cordova Lawsuit.

36. Intervenors assert that to the extent Hartford's claims are dependent on the existence of workers compensation coverage, Hartford's claims for Declaratory Judgment relief are barred by res judicata and/or collateral estoppel.

V. INTERVENORS' COUNTER CLAIMS

37. In the Cordova Lawsuit, Intervenors have asserted claims for common law negligence, negligence per se, negligent entrustment.

38. In the present lawsuit, the Plaintiff alleges that there is no insurance coverage for the claims asserted in the Cordova Lawsuit. The determination of the Plaintiff's claims in this lawsuit will substantially, if not completely, affect the recoverability of any award of damages obtained by the Intervenors in the Cordova Lawsuit. Therefore, in the present lawsuit, Intervenors assert a counter claim for declaratory relief under the Texas and Federal Declaratory Judgment Acts seeking a determination that there is insurance coverage under the subject policy for the claims asserted in the Cordova Lawsuit.

VI. DAMAGES-INTERVENORS

39. In the Cordova Lawsuit, Intervenors seek to recover damages for reasonable necessary medical expenses in the past and future, and physical pain and suffering in the past and future.

40. In addition to the declaratory relief sought, the only damages Intervenor seeks to recover in the present lawsuit are the reasonable and necessary attorneys fees and costs incurred in seeking this declaratory relief.

VII. PRAYER

41. WHEREFORE, PREMISES CONSIDERED, Intervenors, Daniel and Jacob Cordova, respectfully pray that the parties take notice of the filing of this Answer in Intervention, and that upon a final hearing of the cause, judgment be entered for the Intervenors and against the Plaintiff adjudicating insurance coverage for the claims asserted in the Cordova Lawsuit, for reasonable and necessary attorneys fees and costs, pre-judgment interest at the maximum rate allowed by law, post-judgment interest at the legal rate, and such other and further relief to which the Intervenors may be entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Answer In Intervention was transmitted via first class mail to the following on this the 13th day of January, 2009:

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